IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4630 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GREAT CHINA ALLIANCE LTD

Versus

COMMISSIONER OF CUSTOMS

Appearance:

1. Special Civil Application No. 4630 of 1999
M/S TRIVEDI & GUPTA for Petitioner No. 1
(MR PB MAJMUDAR) for Respondent No. 1
MR ANANT S DAVE for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 22/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr Anant S Dave, learned Addl. Standing Counsel waives service of Rule for the respondents. At the request of the learned counsel for the parties, the petition has been taken up for final disposal today.

2. Mr Anant Dave, learned Addl. Standing Counsel for the Central Government seeks leave to delete paragraph 12 from the affidavit-in-reply dated 17th July, 2002.

Leave is granted.

3. In this petition under Article 226 of the Constitution, the petitioner has challenged the apprehended auction of the petitioner's goods being Tussah Silk Water Reeled 33/37D exported by the petitioner and also praying for direction to the respondents i.e. the customs authorities to allow the petitioner reshipment of the said consignment.

The petitioner claims to be an exporter of all types of silk yarn to various countries. In October, 1997, the petitioner entered into an agreement with M/s.Kunal International, New Delhi for sale of about 2500 kgs. of Tussah Silk Water Reeled 33/37D. In terms of the said agreement, on 15th October, 1997, the petitioner shipped 2500 kgs. of Tussah of Chinese origin and the relevant documents were sent to the bankers of M/s. Kunal International as per the terms of the contract. The said party was informed about the shipment and also about the original documents forwarded to their bankers but in spite of several requests made by the petitioner, M/s. Kunal International did not retire the said documents and no payment was made. Hence, the petitioner requested the bankers of M/s. Kunal International to return the original documents to the petitioner's bankers. The petitioner also requested the respondents to allow the petitioner to reship the above consignment to the petitioner at Hongkong on the basis that the goods were not banned items and that the liability to demurrage and port charges was piling up on account of the delay on the part of the authorities in not considering the petitioner's request as contained in the letter dated 10th May, 1999. The petitioner, therefore, filed the present petition through its constituted attorney.

4. In response to the notice issued by this Court, affidavit in reply has been filed by Mr Mahesh Rustagi, Deputy Commissioner of Customs at Kandla stating that the goods in question have been seized as M/s. Kunal

International of New Delhi had imported the same but the goods were not claimed since long as no bill of entry or any other document was filed by the importer within the period stipulated under Section 48 of the Customs Act. Chinese Tussah Silk is a banned/restricted item and can be imported only against a licence or in accordance with the public notice issued in this behalf. No public notice has been issued permitting the free import of Chinese Tussah Silk. The importer M/s. Kunal International failed to appear before the authorities and later on through a letter disclaimed the goods. No import licence was ever produced under which the goods were imported. The importer M/s. Kunal International, New Delhi had imported banned/restricted goods with an intention to re dispose of the same in a manner other than envisaged under the DEEC Scheme and in accordance with the provisions of the Foreign Trade (Development & Regulation Act, 1992 read with the provisions of Customs Act, 1962. It is, therefore, submitted that the seized goods in question are liable for confiscation under Section 111(2) of the Customs Act. The stand taken up in paragraph 15 of the affidavit is that there is no provision in the Customs Act, 1962 to allow reshipment of the goods as it does not provide any locus-standi to the supplier of the goods supplied illegally and unauthorisedly into India.

5. At the hearing of this petition, Mr Gupta learned counsel for the petitioner has submitted that the petitioner is an exporter of the goods and continues to remain owner of the goods so long as the importer has not submitted the bill of entry and has not made the payment to the bankers. Mr Gupta has relied on the decision of the Apex Court in Union of India vs. Sampat Raj Dugar 1992 (58) ELT 163 in support of his contention that the petitioner continues to remain the exporter of the goods in question and that the petitioner is entitled to ask for re-export if the importer fails to pay for the goods and abandons them. Mr Gupta has also relied on the decision of this Court in Unisilk vs. Commissioner of Customs 2001(1) GLR 777 wherein this Court held the seizure and confiscation of the goods as illegal and directed the authorities to restore the goods seized and illegally confiscated to the petitioner - Company which was an exporter. This Court also directed the customs authorities to consider the prayer of that petitioner to either allow the petitioner to dispose of its goods to other licenced importers in India or to reship them as is permissible in law.

6. On the other hand, Mr Anant Dave, learned

Additional Standing Counsel for the Central Government has submitted that since Chinese Tussah Silk can be imported only against a valid licence and no such licence was produced before the authorities, the goods were liable for confiscation and, therefore, permission for reshipment cannot be granted.

7. Having heard the learned counsel for the parties, we are of the view that the extreme stand adopted by the respondent - authorities cannot be upheld. In Union of India vs. Sampat Raj Dugar (supra) and in Unisilk vs. Commissioner of Customs (supra), the Apex Court as well as this Court have held that the exporter of goods continues to remain the owner of the goods as long as the importer does not pay for the goods and that such exporter is entitled to make a request to the authorities either to allow the exporter to dispose of its goods to other licenced importers in India or to reship them. This Court also directed the authorities to restore the goods which were seized and confiscated by the customs authorities without giving the exporter in such a case an opportunity of being heard.

We find that the facts of the present case are similar to those in Unisilk vs. Commissioner of Customs, 2001 (1) GLR 777 and, therefore, the principles laid down in the said case and directions given therein would also be applicable to the facts of the present case.

8. Accordingly, we allow the petition. The respondent- authorities are directed to restore the goods seized from the petitioner.

In view of the fact that the period of three years has already elapsed since the impugned action, we direct the respondents to consider the petitioner's prayer to either allow the petitioner to dispose of its goods to other licenced importers in India or to reship the goods as is permissible in law. While considering this application, the respondents shall consider the principles laid down by the Apex court in Union of India vs. Sampat Raj Dugar, 1992 (58) ELT 163 and also by this Court in Unisilk vs. Commissioner of Customs 2001(1) GLR 777 and shall proceed on the basis that Chinese Tussah Silk can be imported into India against a valid import licence for this purpose. In case the petitioner is not in a position to find out such an importer, the respondent shall consider the petitioner's request for reshipment of the goods as Chinese Tussah Silk is not stated to be a banned item as such but is only a restricted item, import of which is permissible against a

valid import licence.

If the petitioner makes an application within one month from today, the same shall be decided as expeditiously as possible and in any case within two months from the date of receipt of the application.

9. The petition accordingly stands disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-